(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CG)

WRIT PETITION NO. 1760 OF 2004

BETWEEN

Sita Ram Agrawal S/o Late Surajmal Agrawal, aged about 79 Years Karta of H.U.F. who is the owner of M/s Gopal Oil Mills (Solvent Extraction Plant) Post Bilha District Bilaspur, Resident of Bilha, District Bilaspur (CG).

P.R. No. 1752/04
Presented by Shri H.S. Patel
dated 25-6-04

PETITIONER

AND

1. The State of Chhattisgarh,
Through the Secretary Department of Food & Civil Supply
Mantralay, D.K.S. Building, Raipur (CG).

2. District Magistrate,
Bilaspur, Tehsil and District Bilaspur (CG).

3. Smt. Meera Agrawal W/o Vishnu Agrawal,
Resident of 27 Kholi, Bilaspur, Tehsil and
District Bilaspur (CG).

RECEIVED COPY
25/6/04
Clerk to A.G. Bilaspur

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

(216)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1760 of 2004

Sita Ram Agrawal

- Versus -

State of Chhattisgarh and two others

POST FOR ORDER ON 27th JANUARY, 2005

Sd/-
L.C. Bhadoo
Judge

27.1.05

(217)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1760 of 2004

Sita Ram Agrawal

- Versus -

State of Chhattisgarh and two others

Present: -

Shri G.S. Agrawal, Senior Advocate with Shri Sanotsh Yadu, Advocate:	For the petitioner.
Shri Sumesh Bajaj, Deputy Govt. Advocate:	For the State/respondents No.1 and 2.
Shri Manindra Shrivastava, Senior Advocate with Smt. Smita Ghai, Advocate:	For respondent No.3.

O R D E R

(Passed on 27th January, 2005)

L.C. BHADOO, J.

1. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, questioning the legality, propriety and correctness of the order dated 21.6.2004 passed by respondent No.2, the District Magistrate, Bilaspur, in Case No.138/B-121/03-04 (Annexure P-1), whereby the learned District Magistrate cancelled the No Objection Certificate granted in favour of M/s. Shree Gopal Oil Mills on the request of the petitioner for storing petroleum product namely, Hexane.

2. Brief facts leading to filing of this writ petition are that the petitioner herein and his son namely, Vishnu Agrawal - husband of respondent No.3, and Ramakant Agrawal, another son of the petitioner, formed a partnership firm in the name of M/s. Shree Gopal Rice & Oil Mills Pvt. Ltd. Thereafter, they decided to set up a private limited company and accordingly, they prepared Articles of Association on 18th June, 1979, and got it registered under the Companies Act, 1956, and all the assets

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of M/s. Shree Gopal Rice & Oil Mills Pvt. Ltd. were transferred to the newly registered private limited company M/s. Shree Gopal Oil Mills Pvt. Ltd. in which present petitioner Sita Ram Agrawal, Vishnu Agrawal - husband of respondent No.3, and Ramakant Agrawal, another son of the petitioner herein were the Directors. Initially, the petitioner herein was the Managing Director. However, as born out from the record, the petitioner herein in the year 1991 resigned from the post of Managing Director, and before the death of Vishnu Agrawal, husband of respondent No.3, on 10.3.2004, he was working as the Managing Director of M/s. Shree Gopal Oil Mills Pvt. Ltd. However, on account of certain disputes between the family members since last 8-9 years, M/s. Shree Gopal Oil Mills Pvt. Ltd. is closed and is non-functional.

3. In due course of time, the husband of respondent No.3 herein filed a civil suit for permanent injunction, against the petitioner herein and brother Sanwaria Agrawal, showing himself as Managing Director, not to interfere in the affairs of M/s. Shree Gopal Oil Mills Company as Sita Ram Agrawal, the petitioner herein, has already resigned from the post of Managing Director and defendant No.2 Sanwaria Agrawal has already separated himself from the Company. However, that came to be dismissed and even the appeal was also dismissed. In that suit temporary injunction filed by the husband of respondent No.3 was also dismissed and the appeal against the same was also dismissed. However, thereafter, husband of respondent No.3 Vishnu Agrawal filed another suit on behalf of M/s. Shree Gopal Oil Mills Pvt. Ltd. as a Mananging Director of that mill against the petitioner herein and another brother Sanwaria Agrawal; that came to be registered as Civil Suit No.26-A/2000 which was decided on 13th February, 2003, and that suit was dismissed to the extent of declaring the property of the Company. However, it was held that the Company was entitled for possession of the house on payment of the court fees. In para 25 of

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the judgment, the Court held that the property belongs to the joint Hindu family and that property was never transferred to M/s. Shree Gopal Oil Mills Pvt. Ltd. However, that judgment is not final as both the parties have filed first appeal which is pending before the High Court. It is surprising that these persons are changing their stand according to change in the circumstances, at times they claim that the property belongs to Private Limited Company M/s. Shree Gopal Oil Mills and at times they claim that the property is of Hindu Undivided Family.

4. The petitioner herein filed an application on 29.1.2004 before the District Magistrate, Bilaspur, for grant of No Objection Certificate for obtaining the license to store Hexane, the petroleum product, in the oil mill premises, and that application was moved by the petitioner herein showing himself as Proprietor of M/s. Shree Gopal Oil Mills Pvt. Ltd. The No objection Certificate was granted and based on that the petitioner herein also obtained license from the Department of Explosives, Nagpur. However, in the meantime, Vishnu Agrawal, the Managing Director, died on 10.3.2004. When respondent No.3, the wife of Vishnu Agrawal, came to know about this fact, she filed an objection before the District Magistrate on 5.5.2004 (Annexure R-3/4) raising objection that she is the Managing Director of M/s. Shree Gopal Oil Mills Pvt. Ltd., and Sita Ram Agrawal is not even having share in the Company as he withdrew his all amount of share on 16.4.1993. On receiving this application, the District Magistrate, Bilaspur, issued notice to the petitioner herein and conducted enquiry. After conducting enquiry and recording evidence of the parties, vide impugned order the District Magistrate cancelled the No Objection Certificate under the provisions of Rule 150 of the Petroleum Rules, 2002 (hereinafter referred to as 'the Rules'). In the impugned order, the learned District Magistrate after relying on the judgments of the civil Court mentioned that the petitioner herein had resigned from the post of Managing Director of M/s. Shree Gopal Oil Mills Pvt. Ltd. on

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20th March, 1991. The learned District Magistrate relying on para 38 of the judgment of civil Court held that leaving the residential premises of the Company other premises were in possession of the Company, and since on enquiry Sita Ram Agrawal has not been able to clear his position about his status in M/s. Shree Gopal Oil Mills Pvt. Ltd., the dispute regarding property of the Company is pending before the High Court, therefore, in the situation, No Objection Certificate cannot be given to Sita Ram Agrawal.

5. I have heard learned counsel for the parties.

6. Learned counsel for the petitioner submitted that being head of the Hindu Undivided Family, the petitioner was entitled to move for No Objection Certificate, therefore, he moved the application within right and the District Magistrate without any valid reasons cancelled the No Objection Certificate.

7. On the other hand, learned counsel for respondent No.3 argued that in the first instance, the husband of respondent No.3 was the Managing Director of the Company and the civil Court has already held that except the residential premises the whole property was in possession of the Company. Being the Managing Director, Vishnu Agrawal was in the possession and that matter is the subject matter of litigation before the civil court and now the appeal is pending before the High Court, therefore, the petitioner was not entitled to get the No Objection Certificate, that too by misleading the District Magistrate showing himself as the Proprietor of the property, whereas, he had already resigned from the post of Managing Director in the year 1991 and withdrew all his share amount. He further argued that unless the order impugned is perverse and without jurisdiction this Court under the extra-ordinary jurisdiction cannot exercise the power of judicial review. Even if two views are possible, this Court is entitled to interfere with the discretionary order passed by the District

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Magistrate. On facts when there is dispute between the family members regarding the property in question, No Objection Certificate cannot be granted in favour of the petitioner.

8. Having heard learned counsel for the parties, having regard to the facts and circumstances of the case and perusal of the record, it is an admitted position that the property in question is under litigation and there is serious dispute among the family members about the property in question and in that connection first appeal is pending before this High Court. Facts mentioned above in the earlier part of this order makes clear about the dispute between the parties. The petitioner herein showing himself as the sole Proprietor of M/s. Shree Gopal Oil Mills Pvt. Ltd. moved an application before the District Magistrate for obtaining the No Objection Certificate and on that strength he obtained the No Objection Certificate, whereas, he is not the sole Proprietor of the property. This writ petition he has filed as the Karta of Hindu Undivided Family, whereas, the question is still under dispute as to whether the property in question belongs to the Hindu Undivided Family or to M/s. Shree Gopal Oil Mills Pvt. Ltd. In any case, it is not disputed that the husband of respondent No.3 was son of the petitioner and he was the Managing Director of the Company till his death on 10.3.2004, therefore, the interest of respondent No.3 and legal heirs of Vishnu Agrawal is there. Therefore, without obtaining the consent of other members or if it is considered as Company then unless a decision is taken in the meeting of the Directors of the Company, the petitioner herein alone was not entitled to move for "No Objection Certificate" showing himself as the Proprietor of the Company. In this connection, Rule 150 (1) of the Rules is relevant which envisages that

> "a no-objection certificate granted under Rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the District Authority or the State

> Government as satisfied, that the licensee has ceased to have any right to use the site for storing petroleum".

Rule 150 (2) of the Rules envisages that

> "a District Authority or a State Government cancelling a no-objection certificate shall record, in writing, the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned, copy of the order cancelling the no-objection certificate".

Therefore, the District Magistrate is vested with the discretionary power of issuing "No Objection Certificate" for storing the petroleum product. As has been mentioned above, there is serious dispute between the family members of the petitioner herein regarding the property in question and concealing that fact the petitioner obtained "No Objection Certificate". On enquiry vide the impugned order, the District Magistrate reached the conclusion that there is serious dispute between the family members, therefore, in the circumstances, the "No Objection Certificate" granted is liable to be cancelled.

9. On facts, I am of the opinion that the view taken by the District Magistrate is not in any way perverse and contrary to the record or it is not an order passed without jurisdiction. The petitioner has failed to show that how he is solely entitled to use the premises, therefore, the District Magistrate has rightly exercised the jurisdiction available under Section 150 of the Rules. The petitioner has not been able to make out a case for interference by this Court under the extra-ordinary jurisdiction for quashing the order in question.

10. In the result, the petition is devoid of any merit, the same is liable to be dismissed and it is accordingly, dismissed. No costs.

Sd/-
L.C. Bhadoo
Judge

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